

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA KOZAK, also known as PATRICIA
RAY,

UNPUBLISHED
August 4, 1998

Plaintiff-Appellee,

v

No. 198799
Wayne Circuit Court
LC No. 86-617311 DM

THOMAS KOZAK,

Defendant-Appellant.

AFTER REMAND

Before: Markman, P.J., and Saad and Hoekstra, JJ.

PER CURIAM.

Defendant Thomas Kozak appeals as of right from a trial court order granting plaintiff Patricia Kozak reimbursement as an “innocent spouse” for tax liability paid jointly from the proceeds of the sale of marital assets arising out of a divorce proceeding. After this Court remanded for an evidentiary hearing to determine the parties’ intent concerning joint tax obligations,¹ the trial court held that tax liabilities that were alleged to be joint at the time of the judgment of divorce did not continue to be joint after plaintiff was designated an innocent spouse by the Internal Revenue Service (“IRS”). The trial court ordered defendant to reimburse plaintiff for her payments. We reverse.

The parties were married on June 2, 1956. They were engaged in divorce proceedings by 1986. Plaintiff testified that she initially commenced her request with the IRS for innocent spouse status in July 1986. An innocent spouse determination by the IRS relieves one spouse of liability for tax on a joint return provided that certain conditions are met, including that the innocent spouse could not have known about or benefited from income that was omitted from a joint return. Plaintiff did not raise the issue of the pending innocent spouse determination during the original divorce proceedings. On December 10, 1986, a consent judgment of divorce was entered by the trial court. The consent judgment stated:

IT IS FURTHER ORDERED that the following debts of the parties shall remain the joint obligations of the parties, and it is anticipated the joint liabilities of the parties shall

be satisfied from the proceeds from the sale of the items referred to in Paragraph N. and K.:

A. Joint federal and state tax liabilities;

* * *

IT IS FURTHER ORDERED that this Judgment of Divorce is a complete settlement of all matters at issue between the parties of any kind and nature whatsoever legal or equitable, civil or criminal and includes any rights, remedies or choses-in-action (sic) against each other and against the children of the parties hereto.

On February 4, 1987, plaintiff petitioned the trial court to set aside or amend the consent judgment for various reasons, including that plaintiff was not responsible for one-half of all joint tax liabilities based on her anticipated status as an innocent spouse. A final order amending the consent judgment was entered by the court on April 27, 1988. In this order, the trial court allowed plaintiff the opportunity to present her claim for reimbursement for the state and federal taxes that she had paid as joint taxes at a later date, stating:

PATRICIA A. KOZAK shall be permitted to present her claim to the Court for refund of state and federal taxes paid on her behalf within a reasonable time following the issuance of a final order in the matter of PATRICIA A. KOZAK'S innocent spouse petition.

Plaintiff received notice from the IRS that she had been granted innocent spouse status on or about November 23, 1987. Then, in March 1988, she also received notice that the State of Michigan Treasury Department had accepted the federal determination of her status.² She did not file her motion for reimbursement, pursuant to the April 27, 1988 order, until nearly one year later on April 7, 1989. On September 27, 1989, the trial court issued an order denying plaintiff's motion for reimbursement because the IRS determination that plaintiff was an innocent spouse was not binding on the court.

Plaintiff appealed, and this Court reversed the trial court's decision, stating:

The question is whether those obligations which were alleged to be "joint" at the time of the December 10, 1986, consent judgment of divorce continued to be joint in the face of the November 23, 1987, determination of no liability for plaintiff under the innocent spouse provisions of the Internal Revenue Code, sec. 6013. A review of the record does not indicate that the court addressed the parties' actual intent in formulating the consent judgment.

* * *

Accordingly, we find that this case should be remanded to the trial court for further evidentiary hearings to interpret the intent of the parties concerning "joint" tax liabilities, as stated in the 1986 consent judgment for divorce. [*Kozak v Kozak*, unpublished

opinion per curiam of the Court of Appeals, issued April 22, 1992 (Docket No. 122220).]³

At the evidentiary hearing, plaintiff testified that when she agreed to the divorce settlement, she believed that if the IRS considered her to be an innocent spouse, she would not be liable under the divorce judgment to pay the joint tax obligation. Defendant testified that he was not even aware that plaintiff was pursuing an innocent spouse determination with the IRS at the time of the divorce judgment. The trial court determined that “the parties intended to be jointly responsible for their joint tax liability, only”; therefore, “those obligations which were alleged to be joint at the time of the December 10, 1986 consent judgment of divorce did not continue to be joint in the face of the plaintiff’s innocent spouse determination.” Subsequently, the trial court denied defendant’s motion for rehearing or reconsideration.

Defendant first argues that the trial court improperly ordered him to reimburse plaintiff for her payment of joint taxes pursuant to the consent divorce judgment. This Court reviews de novo the trial court’s orders modifying divorce judgments, but will affirm unless it is “left with the firm conviction that the division was inequitable.” *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). As a general rule, property settlement provisions cannot be modified: In the absence of fraud, duress or mutual mistake, courts are bound to uphold property settlements agreed upon by the parties in a divorce action. *Tomblinson v Tomblinson*, 183 Mich App 589, 595; 455 NW2d 346 (1990); *Vigil v Vigil*, 118 Mich App 194, 197; 324 NW2d 571 (1982). However, if a property settlement is ambiguous, the court has the inherent power to interpret and clarify its terms, *Vigil, supra* at 197, so long as this does not change the substantive rights of the parties.” *Pierce v Pierce*, 166 Mich App 579, 581; 420 NW2d 855 (1988). Consent divorce decrees are interpreted and construed in the same manner as a contract: Where the terms are unambiguous, they are construed as a matter of law; but where the meaning is not clear the court may consider extrinsic evidence to determine the intent of the parties. *Beason v Beason*, 435 Mich 791, 799 n 3; 460 NW2d 207 (1990). Accordingly, we must look to the language of the agreement and, if necessary, other objective acts of the parties to determine their intent at the time the settlement agreement was made.

First, the agreement specifically states that “the following debts of the parties *shall remain* the joint obligations of the parties.” (Emphasis added.) The meaning of this phrase appears unambiguous and highlights the specific intent of the parties that they continue to adhere to their current joint liabilities, at least within the confines of the property settlement. It does not seem reasonable, given this language, for plaintiff to argue now that certain debts of the parties *should not remain* the joint obligations of the parties.

Second, we presume that the agreement refers to the joint obligations of the parties as of the time of the judgment. No other such time period is specified. Since the purpose of a property settlement in a divorce judgment is to set out definite and ascertainable assets and liabilities to be divided equitably between the parties, we must be able to look to a specific time period in which the parties’ assets and liabilities are certain. Although the parties could reduce each non-monetary asset or liability into monetary terms to further facilitate the division of property, this is not necessary as long as we are able to ascertain the value of the asset or liability at a specific time. Thus, in the absence of an alternative

specified time period at which to determine the value of the parties' assets and liabilities, we must determine what the parties meant at the time that they agreed to the judgment. At the time of the judgment, plaintiff remained liable for half of all of the joint federal and state taxes. Although plaintiff claims that she believed that an innocent spouse determination by the IRS would affect the amount she owed under that judgment, she could not know what the outcome of the IRS petition would be at that time. Even if we assume that defendant knew about such petition (which he clearly did not), it is illogical to believe, given the relatively substantial amount in question, that he would have been disinterested in the outcome of the subsequent IRS determination and that, resultantly, he would have chosen not to have addressed the consequences of such determination in the agreement.

Third, the joint tax portion of the agreement cannot be read in isolation. Rather, it is merely one part of a larger property settlement that the parties agreed was equitable *as a whole*. Subsequently modifying the agreement on the basis of an IRS reassessment could potentially alter the overall fairness of the agreement. Plaintiff's liability under the divorce settlement does not rest upon the precise level of her federal tax liabilities. Rather, the parties presumably negotiated and compromised on the basis of the full range of their assets and liabilities until both deemed the agreement to be equitable. Thus, the reference to "joint tax liabilities" is significant principally as an allocation of a portion of the parties' overall liability at the time the parties agreed to the judgment and not as a discrete factor that can be viewed in isolation without affecting the whole of the agreement.

Fourth, we note that defendant was utterly unaware that plaintiff had petitioned the IRS for an innocent spouse determination at the time the agreement was discussed and entered. This point underscores the second point above, since defendant could not have intended for the IRS determination to modify or influence the property settlement if he did not even know about it. Plaintiff argues that she had already applied for the innocent spouse determination when the judgment was entered and that she considered this when agreeing to the judgment. However, we believe that she had an obligation to clarify her position to the court and defendant. Obviously, there can be no mutual assent between the parties where one party refuses to disclose her intent, which she knows to be different than that of the other party. Plaintiff should not be allowed to profit after she appeared to assent to the clear intentions of defendant, but was secretly acting to undermine such intentions. See *Perrin v Perrin*, 169 Mich App 18, 24; 425 NW2d 494 (1988); *Villadsen, supra* at 477.

On the basis of these factors, we conclude that the words and circumstances of this consent divorce judgment indicate both parties' intent that their joint liabilities at the time of the judgment remain their joint liabilities within the confines of the divorce judgment. Although the face of the writing in this case is arguably ambiguous had defendant known about plaintiff's innocent spouse petition, the surrounding circumstances indicate that defendant could not have assented to plaintiff's interpretation of the agreement because he was not even aware of the petition. Plaintiff's seeming assent to the plain language of the agreement, and her failure to inform defendant or the court of her petition or her alternative intent, reasonably led defendant to believe that they were in accord regarding their mutual obligations at the time of the original consent divorce judgment. Therefore, we find that both parties manifestly intended their joint tax obligations to remain joint for the purposes of the divorce judgment.

Next, defendant asserts that the equitable doctrine of laches should have barred plaintiff's claim for reimbursement. However, since we have determined that the trial court could not modify the divorce judgment without substantively changing the parties' agreement, this issue is moot. Thus, we decline to discuss it further. Defendant also contends that the trial court's award of costs and fees was improper. However, in light of our reversal of the trial court's order, which includes the award of costs to the prevailing party, we need not address this issue further.

For these reasons, we reverse the judgment of the trial court for plaintiff and find that the parties intended their joint taxes at the time of the original divorce judgment to be paid jointly by both parties.

Reversed.

/s/ Stephen J. Markman

/s/ Henry William Saad

/s/ Joel P. Hoekstra

¹ *Kozak v Kozak*, unpublished opinion per curiam of the Court of Appeals, issued April 22, 1992 (Docket No. 122220).

² Defendant alleges that the State of Michigan subsequently rescinded its decision regarding plaintiff's innocent spouse petition. We have no further information on this issue, but find that the issue is not relevant based on our determination in this case.

³ This decision was rendered by a different panel than that sitting on the instant case.